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ABSTRACT

James Madison's thoughts on various interpretations of the Constitution maintain that public opinion is the ultimate method of legitimizing the document. The Constitution must prevail against mere public opinion, but public opinion may be used to establish the meaning of the Constitution when conflicting interpretations exist. The public good and the public will determine the outcome of conflicts. The issue of internal improvements provided the foundation for Madison's belief that the majority could interpret the Constitution as it willed and could give Congress additional powers. The constitutional amendment process is the solution to the problem; however, Madison believed that the public will was a legitimate, but potentially harmful interpreter of the document. Though his true conception of the public's right to amend is somewhat difficult to determine, Madison hoped that the national will would be expressed by official amendments to the Constitution rather than by interpretation of it. His contradictory use of public will as constitutional interpreter is illustrated by his contrasting conclusions on the national bank and internal improvements issues; he approved the former and vetoed the latter. Madison seems to have felt that he could give in to public opinion when there was an absolute need for certain legislation, but when the need was less pressing, he would hold out for an amendment. In time, it was the United States government (Congress, the Supreme Court, and the President) which would decide when public demands are important enough to justify foregoing the amending process. (TRS)

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James Madison's "Public" as Interpreter of the Constitution

By Donald O. Dewey

> The Will of the Nation being omnipotent for Right, is for wrong also; and . . . the Minority must submit to that danger of oppression as an evil infinitely less than the danger to the whole nation from a will independent of it.
>
> --Madison, 1825[1]

During nearly two decades of retirement from active political life, James Madison centered his thoughts on the Constitution which he had helped to create. Madison offered various guides to the interpretation of the Constitution--history and precedent, the law of nations, and the opinions of federal and state officials--but underlying them all, and legitimizing them, was public opinion.

It was during the discussion of Congress' power--or lack of it--to carry out internal improvement projects that Madison first commented upon the "Will of the Nation" as interpreter of the Constitution. Backed by the public will, Madison declared, Congress could do anything. And for this

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[1] Madison to Thomas Jefferson, Feb. 17, 1825, Library of Congress: Papers of James Madison, Vol. LXXIV (hereafter cited as LC: Madison Papers). An extract of this letter is printed in William Cabell Rives, anonymous ed., Letters and Other Writings of James Madison (4 vols., Philadelphia: J. B. Lippincott and Co., 1865-67) III, 483; hereafter cited as Congress ed., Letters. For the reader's convenience, printed as well as manuscript sources will be cited for letters referred to in the text.

reason he feared both Congress and the public. When Spencer Roane asked Madison to join him in damning the usurpations of the Supreme Court, Madison replied that it was not the Court but Congress which worried him. And even Congress and Court combined were not to be feared unless supported by the public. But what was to check Congress when it was backed and even pushed on by a majority of its constituents? Nothing, he admitted, unless arguments and conciliation might prevail.[1]

The Constitution must prevail against mere public opinion. But public opinion may be used to establish the meaning of the Constitution when there

[1] Madison to Spencer Roane, May 6, 1821, LC: Madison Papers, LXCIII, Gaillard Hunt, ed., The Writings of James Madison (9 vols,; New York: G. P. Putnam's Sons, 1900-10) ix, 55-63; hereafter cited as Hunt, Writings.

are conflicting interpretations, for the "public good" and "public will" must determine such conflicts.[1] He did not explain how we are to determine between two "public goods," though each side in any constitutional conflict will invariably claim to represent the public good. Probably he intended for the majority to determine the public good in such conflicting cases. "The Will of the Nation being in the Majority," he wrote, "the Minority must submit to [the] danger of oppression as an evil infinitely less than the danger to the whole nation from a will independent of it."[2] Since it was the question of internal improvements at national expense which particularly impressed upon Madison's mind the spectre of mass dictatorship as well as the idea of the people interpreting their own Constitution, his views of internal improvements deserve a full consideration.

"I am a great friend to canals as a leading branch of those internal improvements which are a measure of the wisdom, and a source of the prosperity of every Country."[3] Madison wrote these words only five years after he had vetoed, on constitutional grounds, an act by which Congress intended to carry out such projects. To the end, Madison remained a firm advocate of canals, turnpikes, harbor improvements, and, by then, railroads. He was delighted with any improvements carried out through the cooperation of the state governments and patriotic citizens. When New York completed the Erie Canal, he welcomed it with the admonition that no country was more in need

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[1] Madison to Nicholas P. Trist, March 2, 1827, LC: Trist Papers (Congress ed., Letters, IV, 565-66).

[2] Madison to Thomas Jefferson, Feb. 17, 1825, LC: Madison Papers, LXXIV (Congress ed., Letters, III, 483, extract).

[3] Madison to Joshua Gilpin, March 11, 1822, Morristown National Historical Park (Congress ed., Letters, III, 262).

of artificial roads and canals than the United States.[1] He was especially pleased by the tendency of such links in transportation to strengthen the bonds of his beloved union. He often recited the unifying effects of improved avenues of trade and intercourse during his declining years, when disunion threatened the United States.[2] He even ranked internal improvements among the greatest advantages and best evidence of good government.[3] For America to fail to take advantage of the benefits of internal improvements, he contended, would be "a reproach to our Republican system."[4] In light of these remarks, it was obvious that Madison would approve the construction of roads and canals--whenever a competent authority existed.[5]

The lack of a competent authority to carry out internal improvements was what disturbed Madison. He was firmly convinced that Congress should have the authority to build canals and roads. He implied as much in his veto message.[6] Congress alone had access to sufficient funds for great projects and it alone would place the interests of the nation above those of the locality.[7] But he could not bring himself to say that Congress did have the power to carry out internal improvements. He cited his memories of

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[1]Madison to Matthew Carey, May 12, 1825, LC: Madison Papers, LXXIV (Congress ed., Letters, III, 489-90)

[2]Madison to Daniel Drake, Jan. 12, 1835, LC: Madison Papers, LXXXIX (Hunt, Writings, IX, 546-47). Madison to unknown recipient, 1835-36, LC: Madison Papers, XC (Hunt, Writings, IX, 607-10).

[3]Madison to Martin Van Buren, July 5, 1830, LC: Van Buren Papers (Hunt, Writings, IX, 376-83).

[4]Madison to Reynolds Chapman, Jan. 6, 1831, LC: Madison Papers, LXXXIV (Hunt, Writings, IX, 429-37).

[5]Madison to Lewis A. Tarascon, July 24, 1824, LC: Madison Papers LXXIII.

[6]Veto message, March 3, 1817, Hunt, Writings, VIII, 388.

[7]Madison to Reynolds Chapman, Jan. 6, 1831, LC: Madison Papers, LXXXIV (Hunt, Writings, IX, 429-37).

the Federal Convention and even the opinions of Alexander Hamilton to prove that Congress was not intended by those who drew up the Constitution to have such a power. For Hamilton, that "strenuous patron of an expansive meaning" of the constitutional text, to have denied Congress the power to dig canals seemed especially significant to Madison. He questioned whether the Constitution would ever have been ratified if such a power had been implicit in it.[1]

Nor could a series of precedents analogous to those which eventually legitimized the national bank be cited in favor of internal improvements at national expense. The precedent upon which the canal advocates relied was the Cumberland Road, which was undertaken by the federal government during the Jefferson administration. Madison flatly denied that this was a legitimate precedent. It was passed hastily by Congress and approved doubtingly or hastily--he wasn't sure which, though he was sure that it must have been one or the other--by Jefferson. Then, because the road proved useful, it was carried ahead through bills signed by Presidents Jefferson and Madison--"with less of critical investigation perhaps than was due to the case." The constitutionality of the Cumberland Road was never thoroughly debated, like the constitutionality of the bank was, so its approval could not serve as a constitutional precedent.[2] Furthermore, it differed from later cases of internal improvements because it began and was continued as the result of compacts between the federal government and new states.[3] These arguments proved to

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[1]Madison to Edward Livingston, April 17, 1824, Boston Public Library (Hunt, Writings, IX, 187-90).

[2]There was scarcely any debate on this issue recorded in the Annals of Congress--and that which was recorded did not even mention the measure's constitutionality (9th Congress, 1st session, XV, 835-40).

[3]Madison to James Monroe, Dec. 27, 1817, LC: Monroe Papers (Hunt, Writings, VIII, 403-07). Madison called the Cumberland Road appropriations a "midnight precedent," even though it was passed nearly a month before the

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Madison's satisfaction that Congress lacked the power to build roads and canals, except in very limited cases such as military or post roads which were permitted by the Constitution.[1] His problem, then, was to find a way to permit Congress to construct roads and canals without letting it establish the dangerous precedent of exceeding its constitutional powers.

Madison's supposed quandary about allowing Congress to effect internal improvements may have been only for public consumption.[2] In private letters to his warmest friend, Thomas Jefferson, Madison seemed to admit that the

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1st session of the 9th Congress ended. He seems to have assumed that the act was forwarded to the President at the end of the session and that Jefferson therefore was hurried into signing the bill. This misconception is based upon the idea that Jefferson never would have signed the bill if he had considered it fully. Yet Jefferson's trusted adviser Albert Gallatin was a strong advocate of the National Road and there is no hint in Madison's papers that even Madison opposed it before 1817.. Madison objected to calling a law or an act a precedent when it "may have crept, thro' inadvertence, into acts of Congress and been signed by the Executive at a Midnight hour, in the midst of a group scarcely admitting a vigilant attention" (ibid.; Annals of Congress, 9th Congress, 1st session, XV, 1236-37). Fourteen years later, he did admit the legitimacy of federal projects of internal improvements in "particular cases, where a reading of the Constitution, different from mine may have derived from a continued course of practical sanctions an authority sufficient to overrule individual constructions" (Madison to Reynolds Chapman, Jan. 6, 1831, LC: Madison Papers, LXXXIV [Hunt, Writings, IX, 429-37]). But Madison would do his utmost to keep such precedents from being established.

[1]In Federalist No. 42, Madison described the power "to establish post roads" as possibly a beneficial power and certainly a harmless one. As President he denied that the power could be extended to promote roads other than those which were absolutely necessary for postal or military purposes (Hunt, Writings, VIII, 388). However, Madison disapproved of Jefferson's idea that Congress could only designate roads already existing as post roads but could not build them where none existed (Thomas Jefferson to Madison, March 6, 1796, LC: Madison Papers, XIX; Madison to Thomas Jefferson, April 4, 1796, LC: Madison Papers, XIX Congress ed., Letters, II, 89-91).

[2]To suspect Madison of private views differing from his public pose is not unjust, in light of a similar occurrence in 1806. Bishop John Carroll had just been appointed head of the Roman Catholic Church in Louisiana and asked Jefferson's and Madison's advice on appointments. Madison replied that

internal improvements question was already settled in favor of Congress' power. The majority of people and states regarded federal projects of internal improvements as advantageous, so what could the minority do but acquiesce? "I consider the question as to Canals &c as decided," he said, "because sanctioned by the Nation under the permanent influence of benefit to the Major part of it." If Congress failed to carry out internal improvements, he expected that it would be due to causes other than constitutional obstacles.[1] More and more, he declared, the question of Congress' power over internal improvements would give way to the question of the extent of its power.[2]

Jefferson, in the last year of his life, drew up a protest against internal improvements at national expense, intending to have it adopted by

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"the delicacy towards the public authority and the laudable object which led to the enquiries you are pleased to make, are appreciated by the President in the manner which they so justly merit. But as the case is entirely ecclesiastical, it is deemed most congenial with the scrupulous policy of the Constitution in guarding against a political interference with religious affairs, to decline the explanations which you have thought might enable you to accommodate the better, the execution of your trust, to the public advantage. I have the pleasure Sir, to add, that if that consideration had less influence, the President would find a motive to the same determination, in his perfect confidence in the purity of your views, and in the patriotism which will guide you, in the selection of ecclesiastical individuals, to such as combine with their professional merits, a due attachment to the independence, the Constitution and the prosperity of the United States" (Madison to Bishop John Carroll, Nov. 20, 1806, Baltimore Cathedral Archives). Yet on the same day Madison wrote the Bishop a letter marked "private," which expressed his preferences for the appointments in question (ibid.). A file copy of only the "public" letter is in the State Department Domestic Letters of the National Archives.

[1]Madison to Thomas Jefferson, Feb. 17, 1825, LC: Madison Papers, LXXIV (Congress ed., Letters, III, 483). Omitted in the printed version is an interesting section in which Madison disapproved the appointment of Henry St. George Tucker as law professor at the University of Virginia because he "became a convert to the constitutionality of Canals &c." Madison admitted that "in other respects he adhered I believe to the Virginia Creed of which he had been a warm advocate."

[2]Madison to Thomas Jefferson, Feb. 24, 1826, LC: Rives Collection of Madison Papers (Hunt, Writings, IX, 243-46).

the Virginia assembly. But before making it public, he mailed it to Madison for approval, declaring that he would not hazard so important an action without Madison's state support.[1] Madison discouraged Jefferson from putting Virginia in the van of the anti-canal fight. Congress, so long as it was backed by the majority of its constituents, would not be cowed by threats--especially by threats from a state as notoriously weak as Virginia.[2] Instead, he urged his state to wait quietly until the majority, or at least a strong minority including New England and New York, turned against the internal improvements faction. In this letter, he again blamed the people, rather than Congress, for the inroads which had been made upon state's rights. To sum up, Madison believed that the majority could read the Constitution as it willed and that it obviously willed to Congress a power to make internal improvements.

Despite this admission, Madison continued to struggle with the problem of the constitutionality of federal canal and road projects throughout his remaining years. His contention that the question was already settled came in letters to Jefferson[3] and, though they were not marked "confidential,"

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[1]Thomas Jefferson to Madison, Dec. 24, 1825, LC: Madison Papers, LXXV.

[2]Madison to Thomas Jefferson, Dec. 28, 1825, LC: Rives Collection of Madison Papers (Hunt, Writings, IX, 236-40). In the same vein, he wrote that "the language of menace & defiance when addressed to those who have force, & think they have right also, on their side, defeats itself. . . . it is known to excite division when proceeding from the southern quarter, which has such peculiar reasons for distrusting its inherent strength" (Madison to Nicholas P. Trist, Feb. 7, 1827, LC: Trist Papers Congress ed., Letters, III, 565-66).

[3]There were hints of this attitude, however, in a letter to Nicholas P. Trist, Feb. 7, 1827 (LC: Madison Papers, LXXVII Congress ed., Letters, III, 551). He reminded Trist that Virginia was in the minority, both of states and people, on the internal improvements question, but that Virginia had succeeded in opposing the Alien and Sedition Acts because it spoke then for the majority of states and people. He gave no indication that the majority was necessarily right. He also reminded Trist of the distinction between

they were certainly intended as that. Madison knew that ultimately the people might read the Constitution as they willed. But if this important information could be kept from the people themselves, he would be much happier, for he feared the effects upon the Constitution of the "useful and popular" measures which they would surely demand. Just as he was leaving the White House he caught a glimpse of the effect of utility and popularity upon legislation. He blamed these influences for causing Congress to forget questions of constitutionality and to send him the internal improvements act which he vetoed on his last day in office.[1] He never ceased to distrust internal improvements, fearing that canal and road projects were so popular and so useful that they would induce the public to ignore the restrictions of the Constitution, and Congress to ignore its responsibility to refuse to legislate in areas where its powers were in doubt. Although he wanted Congress to possess the power to dig canals and lay roads, he did not want it to come through a novel construction of the Constitution.

A constitutional amendment was the obvious solution to his problem. Frequently he reminded his correspondents of this constitutional way of changing the Constitution and urged its use. In his annual message to Congress

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unconstitutional powers and the abuse of constitutional powers, without explaining in which category he placed internal improvements. Similar attitudes were expressed somewhat more openly in a letter of April 17, 1830, to Edward Everett (Massachusetts Historical Society). He reminded Everett that internal improvements measures were acts of the majority "oppressing the minority thro' the forms of Govt. This distinction would lead to very different views of the topics under discussion. It is connected with the question of Rep. Govt: and with the question of comparative danger of oppressive majorities from the sphere and structure of the General Govt. and from those of the particular Govts." These letters implied much the same things as the letters to Jefferson, but much more evasively.

[1]Madison to James Monroe, Dec. 27, 1817, LC: Monroe Papers, LXV (Hunt, Writings, IX, 403-07).

in 1815 and even in his veto message of 1817 he hinted that he would be receptive to an amendment giving Congress the power to effect internal improvements.[1] When Monroe announced that he intended to ask in his annual message for such an amendment, Madison explained that he had not done so mainly because of his reluctance to interfere with legislative prerogatives--and because of his assumption that his own views on internal improvements were too well known to require exposition. However, he heartily approved Monroe's plan.

Later he presented several specific proposals for amendments—mostly in letters to Martin Van Buren. Then he perhaps saw why others preferred to permit the problem to be solved by interpretation of the Constitution rather than by an amendment. An amendment defining what Congress should and should not do in the field of internal improvements was no easy matter, because it would have to serve for changing times and changing needs. He even admitted that a general rule founded on precise definitions was in some cases impossible and that the "Competent Authority" must then decide.[2] That he gave thought to locating such a competent authority is shown by this paragraph which was crossed-out of the draft of a letter he wrote in 1831:

> If a comprehensive system of internal improvements shd. be induced. . . a just execution would be promoted, by a previous appointment of impartial judicious & responsible Agents, who should examine classify and graduate as far as possible, the eligible canals and improvements in Rivers & other Waters, according to their comparative cost & utility, and the order in which they ought to be successively executed. Such a precaution agst. error & abuse, might have at least a salutary effect in enlightening

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[1] Hunt, Writings, VIII, 342, 388.

[2] Madison to Martin Van Buren, Oct. 9, 1830, LC: Madison Papers, LXXXIV (Congress ed., Letters, IV, 116-17).

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the path of Legislation. The trust & the task however for the Agents, would be so great that the expedient is not likely to be adopted.[1]

Apparently it never occurred to him that the Supreme Court might serve the function of "impartial judicious & responsible Agents." Since he never expounded further on this subject, he must have concluded that Congress must be entrusted with the decision on such projects.

He offered several suggestions for amendments. In one letter he presented two plans, one granting Congress the power to appropriate funds for canals and roads but retaining the jurisdiction over them within the states, the other giving both appropriation and jurisdiction to Congress.[2] The former would have instituted a system much like today's grants-in-aid; Congress would give the money to the states to use for projects of general interest which the states either could not or would not carry out alone.[3]

Whatever the provisions, the important thing was to achieve an amendment. This was the proper way to extend the powers of the federal government; furthermore, he feared that it was the only way to prevent Congress from grasping the power without the formalities of amendment. Congress' claim to a power of internal improvements was so popular, he feared, that it was doubtful that Congress would relinquish it. Therefore, he wanted to concede the power by amendment, to prevent future Congresses from using a constructive enlargement of powers in this case as a precedent to justify still further inroads upon the reserved powers of the states.[4]

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[1]Madison to Reynolds Chapman, Jan. 6, 1831, LC: Madison Papers, LXXXIV (Hunt, Writings, IX, 429-37).

[2]Madison to Martin Van Buren, Sept. 20, 1826, LC: Van Buren Papers (Hunt, Writings, IX, 251-55).

[3]Madison to Martin Van Buren, July 5, 1830, LC: Van Buren Papers (Hunt, Writings, IX. 376-83).

[4]Madison to Martin Van Buren, Sept. 20, 1826, LC: Van Buren Papers (Hunt, Writings, IX, 251-55).

Madison was fighting a delaying action in the internal improvements controversy. He did not deny the people's right to read the Constitution so as to permit Congress to carry out functions not enumerated in that document. He considered such a reading unfortunate but never described it as unconstitutional, extraconstitutional, or revolutionary. Although he admitted the right, however, he hoped to prevent its exercise. Awareness by the public of its competence as interpreter of the Constitution could mean an overthrow of all other interpreters--history, governmental branches, and the constitutional text itself. Madison preferred to concede quietly and by amendment the points demanded by the people. He wanted the people to exercise their right to amend the Constitution--but he wanted to keep from them his admission that, in essence, they had <u>already</u> changed it. In short, the public will was a legitimate--but a potentially harmful--interpreter of the Constitution.

Whether Madison's conception of the national will as an interpreter of the Constitution was carefully considered or was only a spur-of-the-moment reflection of his concern over the issue of internal improvements is difficult to determine. The fact that his views on the public will were shown in only a few private letters to Jefferson give them an indefinite quality which makes them seem rather like passing ideas. Perhaps his failure to express his ideas more explicitly is accounted for by his hope that the national will would be expressed by amendments to the Constitution rather than by implications construed into it.

Madison's contradictory use of public will as an interpreter of the Constitution is demonstrated in his widely contrasting conclusions on the national bank and internal improvements issues. In one case the national will

forced Madison to change his views; in the other it seemed only to make his opposition to a constructive enlargement of Congress' powers all the stronger. Madison cited precedents in justification of the bank, but these precedents were only evidences of national will; the bank existed for twenty years without vigorous opposition from the people or the states and it was the lack of opposition rather than the mere physical existence of the bank which swayed Madison. Yet there was hardly more opposition to internal improvements when Madison surprised Congress with his internal improvements' veto message of 1817.[1] How, then, may we account for the approval of one and the veto of the other?[2]

There are three possible explanations. Madison may have thought that the Constitution could safely be stretched a bit further for a national bank than for internal improvements at national expense. The bank was only a means

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[1]At least one congressman was apparently not surprised. In a confidential note the day of the veto, Henry Clay requested that Madison leave the internal improvements act for his successor to approve. This letter has not been found but a summary of it, probably by Peter Force, is in LC: Madison Miscellany.

[2]Herbert Agar thought that Madison was merely being crotchety. "Madison must have known as much about the Constitution as any man alive, and his interpretation was doubtless logical. Yet Madison was Secretary of State at the time of the Louisiana Purchase, for which no one even pretended there was written constitutional authority; he was Secretary of State at the time of the Embargo Act, which with its enforcing legislation strained the Constitution to bursting-point; he was President when Louisiana became a new state on terms which seemed to violate the original compact, and which according to Josiah Quincy dissolved the Union. If he did not boggle at any of these acts, he was crotchety to veto a bill setting aside the Bank bonus of a million and a half dollars, and the future dividends from Bank stock, as a fund for building roads and canals. One cannot help feeling that he was performing an act of purification, rather than of statesmanship, that he was burning a little incense at the altar of the lost cause; a pretty gesture, but in this case an expensive one, for the veto imposed new burdens and in the end a new inferiority upon the South, the unhappy South which had been so grievously hurt by the Embargo" (Herbert Agar, The Price of Union Boston: Houghton Mifflin, 1950 , p. 84). It seems more likely that his veto was the first counterstroke by Madison against a legislature which he

toward the end of insuring Congress a source from which it could borrow money, while national projects of internal improvements were an end in themselves. Therefore, to create a bank was only to use a somewhat questionable means toward a legitimate end; to allow Congress to carry out internal improvements projects would let it stretch the Constitution for an illegitimate end. Madison did not express the distinction in his justifications of his approval of the bank and disapproval of internal improvements, but elsewhere he intimated that he saw less danger in the abuse of constitutional powers than in the use of unconstitutional powers.[1]

A second explanation was the absence of ~~any~~ many precedents justifying internal improvements which were comparable to those favoring a national bank. Of course, Madison himself killed a prime internal improvements precedent by vetoing the Bank Bonus Bill of 1815, and he continued to exert himself to the utmost to prevent precedents for internal improvements at national expense. However, his position here was not basically different from that which he held when the precedents which eventually legitimized a national bank were established. These precedents were established over Madison's objections and apparently any precedents for internal improvements would also be set in spite of his opposition.

The need for a national bank was the final--and most plausible--explanation. Madison seems to have felt that he could give in to public opinion when there was an absolute need for certain legislation--but when the need was less pressing, he would hold out for an amendment. His correspondence

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thought had already overstepped the bounds of its powers and which threatened to go much further and assume all the functions of government. Throughout his retirement, he closely observed Congress' actions and stood ready to dispute its claims to any powers not clearly its own.

[1]Madison to Nicholas P. Trist, Feb. 7, 1827, LC: Madison Papers, LXXVII (Congress ed., Letters, III, 551).

with Alexander J. Dallas, his Secretary of the Treasury, shows that he regarded an improved financial system as an absolute necessity and that he could not trust the state banks.[1] Madison regarded the digging of canals and building of roads and dredging of harbors as important also, but there was not the same need for haste. Even so, there seems to be no excuse for his failure to encourage Congress to try to create a national bank through the normal procedure of amendment before the financial situation had become a crisis. He often expressed qualms about intruding upon Congress' function as the initiator of amendments, but the issue was important enough to have justified an intrusion.

Who was to decide just what cases of public demand were important enough to justify foregoing the amending process? Madison obviously felt himself qualified to make the decision but he left no suggestion as to how it was to be made after his death. In the final analysis, it has been the government of the United States--Congress through its legislation, the President through his veto, and the Supreme Court through its opinions and decisions admonishing Congress and the states--which has decided such questions.

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[1]The bulk of this correspondence is in LC: Madison Papers and the Huntington Library. Shortly after he wrote of "the expediency and almost necessity" of a second bank (Madison to Charles J. Ingersoll, June 25, 1831, collection of R. Sturgis Ingersoll, Philadelphia, Pa. Congress ed., Letters, IV, 183-87), Madison received a newspaper clipping which accused him of changing positions on the bank issue "upon the plea of necessity." He was urged to deny the accusation. If he ever made any response, the letter has apparently been lost. The accusation appeared in Francis P. Blair's Washington Globe and applied to Henry Clay as well as to Madison. It was sent to Madison by Charles E. Haynes (June 17, 1831, LC : Rives Collection of Madison Papers).